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SUMMARY RECORD OF THE 1145th MEETING

Held at Headquarters, New York,
on Wednesday, 8 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (continued) (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitic and Mr. Strugar (Yugoslavia) took places at the Committee table.

2. The CHAIRMAN invited the Committee to continue asking questions of the Yugoslav delegation under section I of the list of issues.

3. Mr. AGUILAR, noting that over half of the Yugoslav report was devoted to a discussion of issues under article 1 of the Covenant, asked the delegation to expound on the federal Government's conception of self-determination of peoples and of the notion of "nation" as opposed to "republic". He also wondered whether the Government in fact ascribed the worsening human rights situation to political pluralism, as implied in paragraph 81 of the report. Regarding the application of the Covenant under the current Yugoslav legal system, he assumed that the proposed constitutional amendment outlined in paragraph 5 of the report was intended to legislate rights that were not currently protected by the Constitution. It would be interesting to learn what reasoning would dictate the pronouncing of a sentence of capital punishment, permissible only in times of war, also during the period just preceding a war (para. 5 (b)) and what offences would then be punishable by death; and whether the prohibition against torture indeed applied only to offenders (para. 5 (c)).

4. Mr. ANDO expressed regret that the report concentrated entirely on the past three years and said nothing about the period between 1983 and 1988. The omission was unfortunate. He would like to know the Yugoslav Government's view on the de jure and de facto scope of the application of the Covenant under the current rapidly evolving situation in the country, and how a public emergency under article 4 would be defined in general terms and not merely in relation to developments in Kosovo.

5. Miss CHANET, noting that in his oral introduction at the previous meeting the Yugoslav representative had quite rightly described the developments in his country in terms of civil war or inter-ethnic war, said that it was surprising that the report should deal with them in terms simply of a legal and constitutional crisis. She would appreciate fuller information on the events that had led to the recourse to force by the Government and to the war situation characterized by sieges and violence against civilians. Since the federal Government had never declared a state of emergency under article 4 of the Covenant, she wondered what had been the legal basis of its use of force, what orders had it given its army as to the military operations to be conducted, and what control it had over the military operations.

(Miss Chanet)

6. The Yugoslav representative had informed the Committee that a new draft Constitution was being drawn up governing those republics wishing to remain in the federation, and she would like to know which those republics were and what would be the status of Kosovo under the new Constitution. Also, she would like specific details on the electoral process envisaged.

7. Mr. MITIĆ (Yugoslavia) said that the crucial issue of principle in the Yugoslav crisis was the right of peoples to self-determination. To it were related the question of secession from the Federal Republic and the question of demands for self-determination from ethnic majorities within the Republics. His Government's position was that, under the Constitution and under international law, peoples and nations had a right to self-determination, including the right of secession. The peoples composing the Yugoslav federation were the Croats, the Slovenes, the Serbs, the Macedonians, the Muslims, and the Montenegrans. His Government was in the process of drafting rules for secession that would lay down the mutual rights and obligations, both domestic and international, of the Republics and the central Government. It should also be noted that the Constitution provided for Yugoslav borders common to all Republics and Autonomous Provinces and defined by common consent.

8. With regard to the situation in Slovenia, in June 1991 that Republic had tried violently and unilaterally to secede by taking over frontier and customs posts; the Yugoslav Government had responded by sending in 2,000 soldiers, mostly unarmed as the Slovenes well knew, to retake those posts. Slovenian military units had attacked the army troops and in the ensuing violence 60 persons had been killed, four fifths of them Yugoslav soldiers. He would provide documentation on the Slovenian crisis, including the Memorandum of Brioni adopted by the European Community, which stipulated that Slovenian authorities should withdraw their forces from the border posts and allow the Yugoslav authorities to reoccupy them so that the territorial integrity of Yugoslavia could be restored, and that Slovenes should resume their posts in the Yugoslav Government so that a mutually acceptable solution could be devised. The Memorandum had never been implemented and the Yugoslav troops had withdrawn from Slovenia by Presidential decision and, some said, under pressure from the army. Subsequently, the Yugoslav Constitutional Court had declared that withdrawal of federal troops from a Yugoslav republic by sole Presidential decision was unconstitutional.

9. The crisis in Croatia, on the other hand, had been precipitated by the attempt of Croatian authorities to adopt a new Constitution without the consent of the Republic's Serbian population. Acts of discrimination against Serbs had escalated into attacks by the Croatian army and Croatian paramilitary groups against Serbian villages. For the first time on Yugoslav soil, Yugoslav army units had then been ordered to intervene between the two conflicting sides, and they had been attacked by the Croatian military, which had proceeded to commit atrocities verging on genocide. The Presidency had ordered the Yugoslav army to counterattack. His delegation would provide

(Mr. Mitić, Yugoslavia)

documentation on the Croatian crisis, including federal Government memoranda on the Yugoslav crisis and on the crime of genocide. It should be borne in mind that in the past there had been a very cruel secessionist conflict in Croatia. The recent unilateral, violent secession of Croatia could not have been dealt with simply in the courts, especially when the federal Assembly was paralysed. Unfortunately, interference by neighbouring States had only exacerbated the conflict.

10. In the cases of both Slovenia and Croatia, the truth was not black and white; and he appealed to the Committee to study the situations in all their complexity, referring both to the documentation his delegation was furnishing and to the testimony of impartial sources. The Yugoslav army was not a cruel, destructive invader. Nor was it so much a question of the rights of individual Yugoslav republics as a question of principle involving the right of peoples to self-determination.

11. The principle of self-determination was defined in a few key international documents: in article 1 of the Covenant; in the Helsinki Final Act of the Conference on Security and Cooperation in Europe; in paragraph 6 of General Assembly resolution 1514 (XV), a resolution which, however, had been adopted in the context of colonialism; in the relevant section of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)); and in the Committee's own jurisprudence, since paragraph 6 of general comment 12 [21] on article 1 of the Covenant linked the right of self-determination to the duty to refrain from interfering in the internal affairs of other States.

12. Those provisions of international law had not been respected. In particular, the European Community and certain other members of the United Nations had put pressure on the Government of Yugoslavia.

13. One example of how complex Yugoslavia's difficulties were was the problem which had arisen a year earlier over the election of the President of the State Presidency. The candidacy of Mr. Mesić, of Croatia, had been opposed since he had been instrumental in arranging imports of weapons to arm Croatian forces and had been bent on the dismemberment of the country. Mr. Mesić had, however, ultimately been elected. The European Community had sent a high-level delegation to monitor the situation. The outcome of that election had been war, conflict and secession. The actions of the federal Government against Croatia must be seen against that background.

14. With regard to the question of implementation of the Covenant by the Government of Yugoslavia, he said that the Government was aware of its responisiblities, which were on a higher level than those of the other parties in the conflict. Nevertheless, the Yugoslav Government had to accept the reality that neither the federal Government nor any other entity was in control of the whole territory. Croatia and Slovenia had been recognized by

(Mr. Mitić, Yugoslavia)

more than 50 States. The Government of Yugoslavia did not wish to stand in the way of their independence, but had a duty to solve the problems that had arisen in connection with their secession. One such issue was that of the rights of minorities in the new States. More than 6 million Yugoslavs could trace their origins to more than one republic, and whereas before all elements in their backgrounds had been subsumed under Yugoslav nationality, now they would have conflicting claims.

15. The question of Bosnia and Herzegovina was critical. The republic was peopled by Muslims, Serbs and Croats, all with conflicting wishes. The Serbs did not want independence, whereas the Muslims did. Paramilitary groups were operating, and conflict was spreading. International recognition of Bosnia and Herzegovina had done nothing to help.

16. With regard to the status of constitutional rights, in the last month alone more than 250 legal instruments affecting the Constitution had been adopted by the various republics. Many were not in accordance with the Yugoslav Constitution, but, as with regard to application of the Convention as a whole, the Government could not affect decisions in territory beyond its control.

17. The secessionist republics had stated their intent to be bound by international law, given which there should not be any difficulty in ensuring the continued application of the Covenant in territories outside the de facto control of the Government of Yugoslavia. The most obvious area of difficulty was that of minority rights, but the whole issue of the rights and duties of the secessionist States needed attention. A solution must be found either through acceptance by the secessionist republics of the obligations assumed by the Government of Yugoslavia, or through the direct assumption by those republics of those obligations. It seemed, however, that all human rights instruments to which the Government of Yugoslavia was party would continue to apply in either eventuality. Efforts were currently under way to find a compromise solution to the questions surrounding succession.

18. A related difficulty was that of economic relations between the separate elements of Yugoslavia, which previously had formed an economic whole. The imposition of sanctions by the European Community had many problems; economic links had been severed, and enterprises, in the main, were not cooperating.

19. He agreed that the report was somewhat sketchy concerning the question of self-determination. The formal situation was that there were six republics comprising the federation. The Yugoslav Parliament had recently been engaged in the drafting of legislation relating to self-determination, but all activity had been paralysed.

20. The Government of Yugoslavia recognized the need to address the issues raised by the Human Rights Committee and to solve, in cooperation with the republics, all the other current difficulties besetting Yugoslavia. Whether

(Mr. Mitić, Yugoslavia)

republics had seceded or not, the need for common solutions to common problems remained. For example, the only entities capable of dealing with matters relating to airspace were at the federal level.

21. Many people blamed the Yugoslav Government for excesses committed by the army during what was a state of disintegration, but they tended to overlook the fact that the Government included both Croats and Slovenes. It was wrong to refer to the Yugoslav army as Serbian or to Serbian irregulars in Croatia as chetniks; that name had been used during the Second World War to refer to royalists who had collaborated with the Germans against the partisans who were seeking to build a new Yugoslavia. All volunteers were under the control of the Yugoslav army; admittedly the army had not always been able to control its own units, with the result that there had been some regrettable incidents involving destruction of villages, killings and acts of cruelty. Those responsible must be punished and a recurrence of such crimes must be prevented. Although it was difficult for the Government to control the army's activities, given the latter's state of disintegration, the Government accepted responsibility for the army's actions and was taking steps accordingly.

22. Paragraph 4 of the report called for attaining internationally recognized standards in the field of the protection and realization of the acknowledged freedoms and rights of citizens. Yugoslav legislation in the field of human rights prior to the 1989 amendments had been in accordance with international standards in all but two respects: the independence of the judiciary and the selection of judges on the basis of their moral and political suitability.

23. The death penalty had not been abolished in Yugoslavia but had been applied in a very limited way. Indeed, in Serbia there had been no executions for 30 years, and it was hoped that they new constitution would abolish capital punishment altogether.

24. With respect to the question of self-determination and Yugoslavia's failure to recognize the Republic of Kosovo, he noted that nowhere in the world were ethnic minorities granted an unrestricted right to self-determination. If national minorities were to be allowed to secede all States would suffer, not just Yugoslavia. The Secretary-General had been notified of all measures taken by Yugoslavia with regard to Kosovo.

25. With regard to the dismissals of public officials in Kosovo, the persons concerned had not used the remedies at their disposal, namely, the regular courts. Only six ethnic Albanian workers had sued over the previous year as compared with 24 Serbs, despite the fact that many more Albanians than Serbs had been dismissed. Albanians were not represented in the Kosovo government because they had boycotted the elections. If new national elections were held, he hoped the ethnic Albanians would participate. They could not hope to have any influence if they were not represented.

(Mr. Mitić, Yugoslavia)

26. Schools had been closed for budgetary reasons not only in Kosovo but throughout Serbia. The problem in Kosovo concerned the curriculum. The Albanian minority was refusing to send its children to school on account of the curriculum. There had been a proposal for an international symposium organized by an Austrian consortium on the education of national minorities.

27. On the question of the future position of autonomous provinces in Serbia, the Serbian government and a group of experts who were working on a draft constitution had not rejected the idea of providing for autonomous provinces. However the position of such provinces might be different from what it had been under the 1974 constitution, which had been much criticized, because it had been felt that the rights granted had been widely abused. A political decision would be involved at the level of the Serbian government, so that it was very important for ethnic Albanians to take part in elections.

28. He assured the Committee that in the new constitutions of Yugoslavia and the republics all international obligations of Yugoslavia in regard to ethnic minorities and human rights would be respected.

29. With regard to the compliance of the secessionist Republics with international instruments, Croatia and Slovenia had committed themselves to accepting their obligations. The implementation of any such instruments was, however, the responsibility of the respective States.

30. It was not entirely correct to say, as Mr. Müllerson had done, the constitution related to a Serbian state within the Yugoslav federation, and certain emergency provisions were provided that would come into play if the federation ceased to exist.

31. He agreed with Mr. Prado Vallejo that self-determination was a crucial element of the Yugoslav crisis. If a people was prevented from exercising its right of self-determination, that was a human rights violation; however, if that right was asserted unilaterally that, too, was a violation of human rights and of international law. He emphasized that such was not just the opinion of the Yugoslav Government, but a broad consensus in international law. The right of self-determination must be exercised by constitutional means.

32. On the question of prevention or suspension of acts of the Republics by the Constitutional Court, clearly, if the federal Government had no control over certain territories, it was impossible to implement any decision of the Constitutional court in respect of those territories.

33. Yugoslavia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its national legislation contained adequate protections against such practices. Again, the problem was not one of legislation but of implementation.

(Mr. Mitić, Yugoslavia)

34. It was true that, according to the Constitution of Yugoslavia, it was the duty of the Parliament and the President to proclaim a state of emergency. No state of emergency had been declared in the case of the armed conflict in Croatia, and human rights had not been formally limited; those rights had already been endangered by the fact of armed conflict itself.

35. The new draft constitution provided for autonomous provinces. As a first step, a parliament must be elected, which would then proceed to ratify the Constitution. The existing Constitution and the Constitution of Serbia allowed for a popular referendum, but it was still unclear whether one would be held.

36. Mr. WENNERGREN noted that the secessionist republics had solemnly declared that they would abide by all international instruments acceded to by Yugoslavia. It followed, therefore, that the Covenant would be implemented in the breakaway States as well. Since the Socialist Federal Republic of Yugoslavia had been unable to report on its implementation in territory outside the control of the central Government, he wondered whether it would be logical to request reports from the individual republics.

37. Mr. MITIĆ (Yugoslavia) said that, since those republics were not members of the United Nations, the Committee could not request reports from them as they were not formally parties to the Covenant. The outcome of the conference on Yugoslavia was still unclear, but it could result either in four completely independent States, or an economic association of four former Yugoslav States without international personality. He could see no legal basis for asking territorial authorities for reports. Some of the republics had cooperated to varying degrees in supplying information, which had been included in the report. It would be difficult to make generalizations concerning the behaviour of all the secessionist republics. No major problems had arisen with regard to Slovenia, and the Yugoslav army had withdrawn peacefully from Macedonia after its proclamation of independence. The situation had been quite different with regard to Croatia and Bosnia-Herzegovina, however. In his personal opinion, religious intolerance was supporting the existing nationalist rivalries, which was one reason for the varying behaviour among the republics.

Right to life, liberty and security of the person, treatment of prisoners and other persons deprived of their liberty and right to a fair trial (articles 6, 7, 9, 10, 11 and 14 of the Covenant) (section II of the list of issues)

38. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of Yugoslavia, namely: (a) nature and extent of the "flagrant violations of human rights" occurring during military operations, and concrete measures being taken to ensure strict compliance with articles 6 and 7; (b) details on investigations carried out in respect of those violations, particularly regarding cases of torture, disappearances and killings during the military operations, and action taken to punish those

(The Chairman)

found guilty and to avoid recurrence; (c) complaints, if any, concerning human rights violations by the army and paramilitary groups and action taken or to be taken to investigate those cases and to punish the culprits; (d) information on arrangements for efficient supervision of places of detention and on procedures for submitting and investigating complaints, and whether independent and impartial procedures existed under which complaints could be made and investigated about ill-treatment of individuals by the police, members of the security forces, or prison officials; and (e) concrete measures taken since the examination of the second periodic report to strengthen judicial independence and the effects of the current crisis on that situation.

39. Mr. MITIĆ (Yugoslavia), referring to section II (a), said that the crimes against humanitarian law included cruelty, atrocity, murder, rape and violence against the civilian population. He would provide documentation of those violations to the Committee. With regard to section II (b), all cases had been investigated by a committee established specifically to investigate crimes against humanitarian law and genocide. Concerning section II (c), more than 30 members of the army or paramilitary groups were in prison for human rights violations, and many other cases were under investigation. The incidents of cruelty and atrocity which had occurred were the reason the Government had created a special committee and had not left it to the judicial authority.

40. With regard to section II (d), in the territory under Yugoslav Government control, all interested groups, including NGOs and the International Committee of the Red Cross, had been invited to inspect the centres and had offered advice and assistance, especially concerning prisoner exchanges. An impartial procedure for complaints regarding ill-treatment existed through the courts and the special investigation committee and there were also national groups and scientific institutes, which were attempting to determine the scope and provide scientific and criminal evaluation of the crimes.

41. Concerning section II (e), the armed conflict had, of course, affected the situation in Yugoslav territory and normal court activity, but following the situation had improved somewhat since the cease-fire had gone into effect. The special investigation committee would improve the situation further.

42. Mr. FODOR, referring to article 6 of the Covenant, asked whether there were any reliable statistics on summary executions and the number of civilians killed during the armed conflict. The last sentence of paragraph 45 of the report needed some clarification as to what harmonization was required and how it would be accomplished. Paragraph 49 mentioned amendments to the Law on Criminal Procedure (LCP), but he would be interested to hear what current legal provisions were applicable to the powers of law enforcement agencies. He wondered if a set time limit was established for appearance before an investigating judge or if it was solely at police discretion, and whether a warrant was required for arrest.

(Mr. Fodor)

43. He wondered whether the absence of any reference in the report to articles 10 through 16 was due to the fact that nothing had changed in that regard since the second periodic report, or to the recent violent events.

44. Mr. ANDO said, with regard to article 14, as discussed in the second periodic report, that it would be helpful to have further details on intentions to strengthen the independence of the judiciary and on the return to a normal situation after the military conflict had ended.

45. Mr. HERNDL said that he shared Mr. Fodor's concern regarding articles 10 through 16. The delegation had said that the Government was responsible for the actions of the army, but was not responsible for events in territories outside its control. The Yugoslav army had conducted operations in those territories, and therefore the Government was responsible for the army's actions in those locations. He wondered if the army had fully respected the rights set forth in articles 6 and 7 and what measures had been taken to prevent violations of those rights in the future.

46. The Committee wished to ensure that what had happened would not recur in new areas and wondered if the Government was aware of its responsibilities to safeguard the rights of all persons under its jurisdiction.

47. Mr. AGUILAR also expressed concern about implementation of articles 6 and 7 and the jurisdiction of the Yugoslav army in the breakaway territories. He would welcome further explanations regarding paragraph 43 of the report and the proposed amendment to the Constitution limiting the application of capital punishment. He would like to know what had led the Government to propose such action, and requested more examples of cases in which capital punishment could be imposed.

The meeting rose at 6 p.m.